

Message Text

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ACTION L-03

INFO OCT-01 ARA-06 EUR-12 IO-13 ISO-00 EB-07 AID-05 COME-00

STR-04 OPIC-03 JUSE-00 AF-08 EA-07 NEA-10 CIAE-00

DODE-00 PM-04 H-02 INR-07 NSAE-00 NSC-05 PA-01 PRS-01

SP-02 SS-15 NSCE-00 SSO-00 USIE-00 INRE-00 /116 W

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O R 022136Z AUG 76

FM USMISSION GENEVA

TO SECSTATE WASHDC NIACT IMMEDIATE 1624

INFO AMEMBASSY BRASILIA NIACT IMMEDIATE

USMISSION USUN NEW YORK

USMISSION USEC BRUSSELS

USMISSION OECD PARIS

C O N F I D E N T I A L GENEVA 6219

BRASILIA FOR ASSISTANT SECRETARY LEWIS

DEPT FOR IO (MOREY), EB (GREENWALD), EB/OFD/OIA
(CONSTABLE) AND L (LEIGH)

E.O. 11652: GDS

TAGS: ECOSOC, EGEN, EFIN

SUBJ: 61ST ECOSOC: ITEM 13 (US PROPOSAL ON ILLICIT PAYMENTS

REF: (A) GENEVA 6134; (B) GENEVA 6092; TELCON
(C) GENEVA 5975; (D) MYERSON-BRASILIA/(MARSHALL)

SUMMARY: THIS CABLE REPORTS THE LATEST LANGUAGE AND
NEGOTIATING SITUATION. WE NEED URGENT GUIDANCE BOTH
ON THE TEXT REPORTED IN THIS MESSAGE AND ON THE CONTINGENCY
OPERATIONS OUTLINED. END SUMMARY.

1. INFORMAL WORKING GROUP MET THROUGHOUT THE DAY ON
AUGUST 2 IN AN ATTEMPT TO RECONCILE OUR DRAFT (REFTEL A
AND C) WITH G-77 PROPOSED AMENDMENTS (REFTEL B) TO
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OUR RESOLUTION DEALING WITH ILLICIT PAYMENTS. MAJOR

G-77 SPOKESMEN WERE IRAN (WHO WAS HELPFUL TO US) AND BRAZIL.

2. PREAMBULAR SECTION POSED NO SERIOUS PROBLEMS.
OUR PREAMBULAR PARAGRAPH ONE WAS ACCEPTED UNCHANGED.
OUR PREAMBULAR PARAGRAPHS 2 AND 3 WERE CHANGED
TO READ "NOTING THE DECISIONS OF THE COMMISSION ON
TRANSNATIONAL CORPORATIONS AT ITS SECOND SESSION AS
CONTAINED IN PARAGRAPH 37 OF ITS REPORT (E/5782)".

G-77 INSISTED THAT THE QUESTION OF PERMANENT SOVEREIGNTY
WAS GERMAINE TO THIS ISSUE AND POINTED TO THE CONSENSUS
RESOLUTION ON NATURAL RESOURCES APPROVED AT THIS
ECOSOC WHICH READS IN PART "REAFFIRMING THE PRINCIPLE
OF PERMANENT SOVERIGNTY OF EACH STATE OVER ITS
NATIONAL RESOURCES." USDEL STATED WE WOULD ACCEPT
THIS WORDING FOR PREAMBULAR PARA 3
AD REFERENDUM; FRG AND JAPAN NOTED THAT THEY
WOULD HAVE TO MAKE A STATEMENT OF RESERVATION SHOULD
THIS REMAIN IN THE FINAL TEXT.

3. THE BIG FIGHT CAME OVER OPERATIVE PARAGRAPH 1(A).
AFTER CONSIDERABLE DEBATE AND MANY ATTEMPTS AT DRAFTING,
THE CONTACT GROUP AGREED TO WORK WITH THE FOLLOWING TEXT:
"TO ESTABLISH AN AD HOC INTERGOVERNMENTAL WORKING GROUP
TO CONDUCT AN EXAMINATION OF THE PROBLEM OF CORRUPT
PRACTICES, IN PARTICULAR BRIBERY, IN INTERNATIONAL
COMMERCIAL TRANSACTIONS BY TRANSNATIONAL AND OTHER CORPORA-
TIONS, THEIR INTERMEDIARIES AND OTHERS INVOLVED, TO
ELABORATE IN DETAIL THE SCOPE AND CONTENTS OF
(AN) (A POSSIBLE) INTERNATIONAL AGREEMENT TO PREVENT
AND ELIMINATE ILLICIT PAYMENTS, IN WHATEVER FORM, IN
CONNECTION WITH INTERNATIONAL COMMERCIAL TRANSACTIONS
AS DEFINED BY THE WORKING GROUP, (TO PREPARE A
SET OF DRAFT ARTICLES WITH THE VIEW TO FORMULATING
SUCH AN INTERNATIONAL AGREEMENT,) AND TO REPORT TO
THE 63RD SESSION, ALONG WITH SUCH OTHER RELEVANT PROPOSALS
AND OPTIONS AS THE GROUP MAY DECIDE."

4. BRAZIL, WITH ARGENTINA'S SUPPORT, WAS ADAMANT THAT
THEIR INSTRUCTIONS DID NOT PERMIT THEM TO AGREE EXPLICITLY
TO THE DRAFTING OF ARTICLES OF AN INTERNATIONAL
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AGREEMENT. THEY PROPOSED THEREFORE TO DELETE THE PHRASE
"TO PREPARE A SET OF DRAFT ARTICLES WITH THE VIEW TO
FORMULATING SUCH AN INTERNATIONAL AGREEMENT" AND, AS
A CONCESSION TO US, TO DELETE "A POSSIBLE." THEY,
AS WELL AS OTHER G-77 MEMBERS, ARGUED THAT "TO ELABORATE
IN DETAIL THE SCOPE AND CONTENT OF AN INTERNATIONAL
AGREEMENT" GIVES THE WORKING GROUP THE POSSIBILITY
OF MOVING INTO THE DRAFTING STAGE SHOULD THEY DECIDE TO

DO SO. BRAZIL IS NOT SURE THAT IT CAN ACCEPT THE PHRASE "TO ELABORATE IN DETAIL" AND MAY REVERT TOMORROW TO THE MORE GENERAL FORMULATION OF "TO DEFINE." USDEL STATED THAT OUR INSTRUCTIONS CALLED FOR AN EXPLICIT MANDATE TO THE WORKING GROUP TO PREPARE A SET OF DRAFT ARTICLES. WE AGREED HOWEVER TO REFER THE BRAZILIAN-ARGENTINE PROPOSAL TO WASHINGTON.

5. OUR EARLIER REFERENCES TO "ILLICIT PAYMENTS TO GOVERNMENT OFFICIALS" CAUSED PROBLEMS FOR SOME G-77 REPS, PAKISTAN IN PARTICULAR, WHO WANTED ACTION TO COVER QUASI-PUBLIC CORPORATIONS WHOSE OFFICIALS ARE NOT CONSIDERED GOVERNMENT OFFICIALS. OTHERS RAISED THE ARGUMENT (NOT CONVINCING TO US) THAT IT IMPLICITLY FOCUSED ATTENTION ON GOVERNMENTS RATHER THAN TNC'S. THE FORMULATION ABOVE ("AS DEFINED BY THE WORKING GROUP") BASICALLY FINESSES THE LATTER PROBLEM BUT GETS THE IDEA ACROSS THAT THE AGREEMENT WILL BE LIMITED, WITH THE EXACT SCOPE TO BE DETERMINED.

6. OPERATIVE PARAGRAPHS 1(B) AND 1(C) WERE ACCEPTED AD REFERENDUM AS PROPOSED IN THE G-77 DRAFT. WITH REGARD TO OPERATIVE PARAGRAPH 2, WE SUGGESTED THAT SPECIFIC REFERENCE BE MADE TO TNC CENTRE AS WELL

AS TO UNCITRAL. OUR PROPOSED PREAMBULAR PARAGRAPH DEALING WITH WORK ON A CODE OF CONDUCT NOW BECOMES OPERATIVE PARAGRAPH THREE AND THE WORDING IS THAT PROPOSED IN THE G-77 TEXT. OUR OPERATIVE PARAGRAPH 3(A) NOW BECOMES OPERATIVE PARAGRAPH 4. WE RESERVED THE RIGHT TO RETURN TO OUR PROPOSED OPERATIVE PARAGRAPH 3(B) WHEN THE QUESTION OF OPERATIVE PARAGRAPH 1(A) IS RESOLVED.

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7. AT THE CONCLUSION OF TODAY'S WORK, PARTICIPANTS IN THE CONTACT GROUP AGREED TO CONSULT FURTHER WITH THEIR RESPECTIVE HOME GOVERNMENTS. THE CONTACT GROUP WILL MEET TOMORROW, AUGUST 3, AT 10 A.M. GENEVA TIME.

8. BEGIN USDEL COMMENT: WE BELIEVE THAT THE PROPOSAL OF BRAZIL-ARGENTINA AS OUTLINED ABOVE IN PARA 4 IS ALMOST CERTAINLY AS MUCH AS WE CAN GET AT THIS SESSION OF ECOSOC--BARRING AN UNEXPECTED SHIFT IN POSITIONS OF BRAZIL AND POSSIBLY SEVERAL OTHERS. ALTHOUGH IT DOES NOT PROVIDE AN EXPLICIT MANDATE TO DRAFT ARTICLES OF AN INTERNATIONAL AGREEMENT, WE BELIEVE THAT THE MANDATE "TO ELABORATE IN DETAIL THE SCOPE AND CONTENTS" LEAVES OPEN A POSSIBILITY FOR THE WORKING GROUP TO MOVE FORWARD TO THIS STAGE, AND WE ARE PREPARED TO MAKE AN

INTERPRETIVE STATEMENT ALONG THESE LINES SHOULD THE RESOLUTION COME FORMALLY BEFORE ECOSOC FOR CONSIDERATION. ALTHOUGH BRAZIL IS CARRYING THE BALL OF THIS ISSUE, THE BRAZILIAN REP INSISTED THROUGHOUT OUR MEETINGS TODAY THAT IT WAS THE G-77 AS A WHOLE WHICH HAD SERIOUS RESERVATIONS ABOUT GETTING INVOLVED IN A DRAFTING EXERCISE ON THE LIMITED QUESTION OF ILLICIT PAYMENTS.

9. WE HAVE CHECKED INFORMALLY WITH OUR WEO COLLEAGUES AND ALTHOUGH GERMANY AND JAPAN ARE NOT HAPPY WITH THE WIDENED MANDATE OF THE WORKING GROUP TO EXAMINE "THE PROBLEM OF CORRUPT PRACTICES, IN PARTICULAR BRIBERY," THEY ALL BELIEVE THAT THEY CAN GO ALONG WITH THE PROPOSED BRAZILIAN-ARGENTINE FORMULATION. RECOGNIZING THAT THE TEXT AS IT STANDS IS DEFICIENT, ESPECIALLY IN NOT HAVING AN EXPLICIT COMMITMENT TO SEEK TO DRAFT ARTICLES OF AGREEMENT, WE NEVERTHELESS RECOMMEND ACCEPTING UNLESS THERE ARE MAJOR OVERRIDING WASHINGTON REASONS TO THE CONTRARY. IT REPRESENTS RESULT OF A MAXIMUM EFFORT HERE AND IN CAPITALS AND WOULD, WE BELIEVE, GIVE US A BASIS TO PUSH FOR AN AGREEMENT IN THE GROUP TRYING MEANWHILE TO BRING BRAZIL OR OTHER LAGGARDS ALONG. MUCH WILL DEPEND ON WHICH 18 GOVERNMENTS ARE REPRESENTED IN THE GROUP. ABSENCE OF EXPLICIT DRAFTING COMMITMENT MIGHT MEAN THAT AN ACTUAL DRAFT TEXT WOULD NOT BE READY AFTER ONE YEAR, BUT FAILURE TO

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ACCEPT COMPROMISE TEXT PRECLUDES ANY POSSIBILITY OF GETTING A TREATY.

10. IF THIS PROPOSED TEXT IS NOT ACCEPTABLE TO THE DEPARTMENT, HOWEVER, WE WILL NEED IMMEDIATE INSTRUCTIONS ON HOW TO PROCEED FROM HERE. WE COULD ATTEMPT TO FORCE A VOTE ON OUR ORIGINAL TEXT, PERHAPS REVISED TO TAKE INTO ACCOUNT THE ACCEPTABLE G-77 PROPOSALS, BUT WOULD RUN THE DANGER OF (A) DEFEAT, ESPECIALLY IF THE G-77 MAINTAINS ITS UNITY AND OPPOSITION, BUT EQUALLY LIKELY IF MOST G-77 ABSTAIN, (B) AMENDMENT ALONG THE LINES OF THE BRAZIL-ARGENTINA PROPOSAL OR STRONGER, AND (C) DEFERRAL OF CONSIDERATION TO THE 31ST GENERAL ASSEMBLY OR LATER. THE MAIN POINT, HOWEVER, IS THAT GIVEN DYNAMICS OF G-77 UNITY PLUS SOVIET BLOC SUPPORT, ANY VOTE WOULD BE A HIGH-RISK OPERATION WITH LITTLE CHANCE OF SATISFACTION FOR US. AS AN ALTERNATIVE, WE COULD FORMALLY WITHDRAW OUR PROPOSAL FROM CONSIDERATION: HOWEVER, THERE IS NOTHING NOW TO PREVENT THE G-77 FROM TABLING AND ACTING ON ITS PROPOSAL SHOULD IT WISH. NEVERTHELESS, WITHDRAWAL REMAINS THE OPTION WE WOULD RECOMMEND SHOULD WE BE UNABLE TO REACH AN ACCEPTABLE

AGREEMENT ON THE TEXT. END USDEL COMMENT.CATTO

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: POLICIES, BRIBERY, NEGOTIATIONS, MULTINATIONAL CORPORATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 02 AUG 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ShawDG
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976GENEVA06219
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760297-1060
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760897/aaaadhail.tel
Line Count: 224
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 GENEVA 6134, 76 GENEVA 6092, 76 GENEVA 5975
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 31 MAR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <31 MAR 2004 by SmithRJ>; APPROVED <13 AUG 2004 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: 61ST ECOSOC: ITEM 13 (US PROPOSAL ON ILLICIT PAYMENTS)
TAGS: EGEN, EFIN, US, ECOSOC
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006